

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE WINCHESTER DIVISION

Ashton Hughes,)	
Joshua VanDusen,)	
Shannon Helmers, and)	
Charles Dodson,)	
)	
Plaintiffs,)	Civil Action No. 4:19-cv-00028-CLC-SKL
v.)	
)	
Denise Jackson and,)	Judge Curtis L. Collier
RVShare, LLC,)	Magistrate Judge Susan K. Lee
)	
Defendants.)	

**DENISE JACKSON’S RESPONSE TO PLAINTIFFS’ MOTION TO DISMISS
AND MOTION FOR AN ORDER OF DISMISSAL WITHOUT PREJUDICE OF
DENISE JACKSON’S COUNTERCLAIMS AGAINST PLAINTIFFS JOSHUA
VANDUSEN, SHANNON HELMERS, AND CHARLES DODSON**

Defendant Denise Jackson (“Jackson”), by and through counsel, pursuant to *Federal Rules of Civil Procedure 12(b)(6) and 41(c)* submit her *Response to Plaintiffs’ Motion to Dismiss and Motion for an Order of Dismissal without Prejudice of Counterclaims against Joshua Vandusen, Shannon Helmers, and Charles Dodson*, and states as follows:

INTRODUCTION

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Plaintiffs have moved this Court to dismiss Jackson’s Counterclaims against Plaintiffs Joshua VanDusen, Shannon Helmers, and Charles Dodson on the basis that said Counterclaims fail to state a claim.

FACTUAL BACKGROUND

For the purposes of this pleading, Jackson generally agrees to the factual section set forth in Plaintiffs' Motion to Dismiss (Hereinafter "Plaintiffs' Motion"). Essentially, Plaintiffs suffered injuries from carbon monoxide poisoning while staying in an RV at Bonnaroo Music Festival, and the RV was rented by Ashton Hughes through RVShare.com and owned by Defendant Jackson.¹

DENISE JACKSON'S COUNTERCLAIM

For the purposes of this pleading, Jackson generally agrees to the "Denise Jackson's Counterclaim" section set forth in Plaintiffs' Motion.² Basically, Jackson's Counterclaim centers around the contractual agreement between Denise Jackson and Ashton Hughes.³

ARGUMENT

In this case, Plaintiffs' Motion is well taken. For that reason, this response will not dispute the content of Plaintiffs' Motion. Rather, Jackson is simply asking for a dismissal without prejudice of the Counterclaims against Joshua Vandusen, Shannon Helmers, and Charles Dodson.

Voluntary dismissal is permitted only under Rule 41(a)(1)(A)(ii) on "a stipulation of dismissal signed by all parties who have appeared" or under Rule 41(a)(2) "by court order, on terms that the court considers proper."⁴ Voluntary dismissal by stipulation or by court order is presumptively without prejudice, unless the stipulation or order states otherwise.⁵ The same rule extends to the dismissal of any counterclaim.⁶

¹ See Plaintiffs' Motion, 2-3

² *Id.* 4

³ See Denise Jackson's Counterclaim ¶ 1.

⁴ Fed.R.Civ.P.. 41(a)(1)(a)(ii), (a)(2)

⁵ *Id.*

⁶ Fed.R.Civ.P.. 41(c)

Because Plaintiffs have served a reply to the Counterclaim, a dismissal by Jackson of her Counterclaims is not available pursuant to Rule 41(c). At this time, Jackson would move for an order dismissing the Counterclaims against Joshua Vandusen, Shannon Helmers, and Charles Dodson, and Jackson would request the Court do so without prejudice.

Jackson would like to reserve the right to assert Counterclaims against the aforementioned Plaintiffs if facts are presented during the discovery process which would form a basis to state a claim against the aforementioned Plaintiffs. At this stage, Jackson agrees the only Counterclaim which states a claim upon which relief can be granted is the Counterclaim against Plaintiff Ashton Hughes.

CONCLUSION

For all the reasons stated herein, Jackson would move the Court for an order dismissing the Counterclaims against Joshua VanDusen, Shannon Helmers, and Charles Dodson. Denise Jackson would move the Court order said dismissal be without prejudice.

Respectfully submitted,

LUTHER-ANDERSON, PLLP

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CERTIFICATE OF SERVICE

I hereby certify that on the 26^h day of September 2019 I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will automatically send a notice of filing to the following:

Philip N. Elbert, Esq.
Jeffrey A. Zager, Esq.
Benjamin C. Aaron, Esq.
NEAL & HARWELL, PLC
1201 Demonbren Street, Suite 1000
Nashville, TN 37203

This 26th day of September 2019.

The foregoing document was served via U.S. Mail upon the following:

Herbert H. Slatery III
Office of the Attorney General and Reporter
P.O. Box 20207
Nashville, TN 37202-0207

This 26th day of September 2019.

LUTHER-ANDERSON, PLLP

By: /S/ Calli C. Kovalic
CALLI KOVALIC, BPR #034876, *pro hac vice*